



September 14, 2016

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication, MB Docket No. 16-161

Dear Ms. Dortch:

A group of self-described “public interest and civil rights organizations” (“Interest Groups”) filed reply comments in the above-captioned proceeding opposing the Federal Communications Commission’s (FCC) proposal to eliminate the correspondence file from commercial broadcasters’ local public inspection files.¹ They argue that “moving to an online-only format would frustrate poor people and people of color.”² Curiously, these same groups saw no such income and racial injustice when they pushed the FCC to require television and radio broadcasters to place their public inspection files exclusively online in the first instance.

At the urging of some of the same interest groups identified above, the Commission adopted an order in 2012 requiring broadcast television stations to move their public inspection files online, rather than maintaining local, paper copies at their main studios.³ In 2016, the

¹ Reply Comments of the National Hispanic Media Coalition, the American Federation of Labor and Congress of Industrial Organizations, The Center for Media Justice, Common Cause, Communications Workers of America, Free Press, and Public Knowledge, MB Docket No. 16-161, at 1 (Aug. 22, 2016) (Interest Groups Reply Comments).

² Interest Groups Reply Comments at 1.

³ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children’s Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012) (Television Broadcaster Online Public File Order).

1771 N Street NW
Washington DC 20036 2800
Phone 202 429 5300
www.nab.org

Commission extended that requirement to additional entities, including radio broadcasters.⁴ In both instances, the FCC did not require broadcasters to place their correspondence files online due to privacy concerns.⁵

Earlier this year, the FCC proposed to eliminate the requirement that commercial broadcasters maintain their local correspondence files. The Commission stated that while the goal of the correspondence file “was to ensure that broadcasters comply with their public interest obligation to air programming that is responsive to the needs and interests of their community of license,” it is not necessary to require stations to “retain and make available to the public” the correspondence they receive in order to ensure that stations fulfill this obligation.⁶ Rather, the Commission stated that the elimination of this requirement will reduce the burdens on commercial broadcasters “without affecting the public’s ability to communicate directly with the station or to file petitions, comments, and complaints regarding the station with the FCC.”⁷

The Interest Groups have now opposed this common sense reform, claiming “[c]ommunity members without access to the internet should not be excluded from the resources that allow them to hold their broadcasters accountable.”⁸ They assert that eliminating the requirement to maintain a paper correspondence file (which only applies to over-the-air commercial broadcasters) would disadvantage Americans who lack broadband at home, because they could not read or register online complaints about their local stations.

Not only does this argument have no force on its face – the Interest Groups cannot point to a single instance where they have accessed the physical correspondence files – it also violates the chutzpah doctrine.⁹ A number of these very groups actively lobbied the FCC in 2012 to move all other elements of the public file exclusively online. Evidently, these groups did not care about Americans without access to broadband at home when they ignited the 2012 proceeding, but now they have had some sudden epiphany that online files are actually a harmful thing.

⁴ See *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016).

⁵ See *Television Broadcaster Online Public File Order*, 27 FCC Rcd at 4566-67.

⁶ *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, Notice of Proposed Rulemaking, MB Docket No. 16-161, FCC 16-62, at ¶ 9 (May 25, 2016).

⁷ *Id.*

⁸ Interest Groups Reply Comments at 2.

⁹ See *Harbor Ins. Co. v. Schnabel Foundation Co.*, 946 F.2d 930, 937 n. 5 (D.C. Cir. 1991) (stating that the argument by Party 1 that Party 2 was negligent for relying on Party 1’s conduct, “reminds us of the legal definition of Chutzpah: Chutzpah is a young man, convicted of murdering his parents, who argues for mercy on the ground that he is an orphan”).

As a brief refresher, the “Public Interest Public Airwaves Coalition” claimed in 2011 and 2012:

[F]or too long, access to the public file has been anything but convenient for the public. The FCC’s current public file rules must be updated to reflect technological developments that can help to minimize public file burden on both the public and on licensees. *The Coalition is pleased that the Commission has proposed to bring the public file into the digital age by replacing paper files with an online public file hosted on the Commission’s website.* Putting the public file online advances the twin goals of encouraging public involvement in monitoring stations’ performance and promoting dialogue between stations and their communities. It also likely would diminish many of the burdens associated with broadcasters’ maintenance of paper files.¹⁰

The groups wholly supported moving the public inspection files to an online-only platform. Nowhere did they raise the argument that poor people and people of color would lose the ability to communicate with broadcasters or that eliminating paper public files would “disempower those members of the broadcaster’s community of license who still rely on this vital resource.”¹¹ Instead, the groups recognized that the public has an interest in communicating with broadcasters, and that today, communication is best facilitated through the internet. If Common Cause, Free Press and the others opposing elimination of correspondence files had concerns about access for the poor and people of color, they should have raised that argument years ago when they successfully, and without any self-doubt, pushed for an online public file.

As the National Association of Broadcasters (NAB) and other broadcast commenters laid out in this docket: (1) the public does not actually make use of the correspondence file; (2) members of the public have multiple avenues to communicate with broadcasters 24 hours per day, seven days a week, whether or not they have internet access; and (3) maintenance of the paper file requires use of station resources that could be otherwise allocated but for the paper correspondence file.¹² Contrary to the Interest Groups’ new concerns, nothing

¹⁰ Comments of the Public Interest Public Airwaves Coalition, MM Docket Nos. 00-168, 00-44, at 6-7 (Dec. 22, 2011) (signed by Common Cause, Free Press, Benton Foundation, Campaign Legal Center, Media Access Project, New America Foundation, and the Office of Communication Inc. of the United Church of Christ) (emphasis added); see also Paperwork Reduction Act Comments of the Public Interest Public Airwaves Coalition, MM Docket No. 00-168, at ii (Jan. 23, 2012); Letter of Common Cause, Communications Workers of America, et al., MM Docket Nos. 00-168, 11-189, at 2 (Jan. 17, 2012) (“The Obama Administration has proclaimed its strong support of transparency in government—the more data available to members of the public, the easier it is for the public to hold both public and private institutions accountable. President Obama has directed government agencies to post as much data as possible online to facilitate an informed citizenry and more effective operations. The data maintained by broadcasters as part of their license obligations is no exception. This information is not available anywhere else. It is time broadcasters joined the 21st century and moved their public files out of the file cabinet and onto the Internet.”).

¹¹ See Interest Groups Reply Comments at 2.

¹² See Comments of the National Association of Broadcasters, MB Docket No. 16-161 (July 22, 2016); see also Comments of the Broadcaster Coalition, MB Docket No. 16-161 (July 22, 2016); Comments of Saga Communications, Inc., MB Docket No. 16-161 (July 22, 2016); Letter of Joshua N. Pila, Meredith Corporation, MB Docket No. 16-161 (July 21, 2016).

about the proposal to eliminate the correspondence file will hinder the ability of the public to communicate with broadcasters, even for those members of the public who do not have internet access.

The Commission should adopt the proposal to eliminate commercial broadcasters' correspondence file from their public inspection files. It will not decrease the benefits of an online inspection file to the public, but it will decrease the burdens faced by broadcasters. As Free Press stated so succinctly in 2012, "Public information should be *public*. In the 21st Century that means online—not buried in broadcast station filing cabinets."¹³

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs
National Association of Broadcasters

¹³ Letter of Corie Wright, Free Press, Senior Policy Counsel, MM Docket No. 00-168, at 2 (April 19, 2012).